

#### § 588.24

(For a list of the contents of the complaint file, see § 588.76. The EEO officer ensures that all copies of the file are complete, legible, and identical.

#### § 588.24 Arranging a hearing.

(a) When the complainant asks for a hearing, the EEO officer requests assignment of a complaints examiner from the EEOC District Office that has geographic jurisdiction over the activity where the hearings is to be held. (See appendix L.) The hearing will usually be held at the activity where the complaint is permanently assigned or has applied for employment. If another location is preferred, the written request to EEOC will specify the alternative location. However, EEOC will decide where a hearing is to be held. For travel funding and other costs, see § 588.79.

(b) The written request to EEOC will include the original complaint file (See § 588.76). In addition, one copy of the tabbed complaint file will be sent to EEOCCRA.

(c) The request to the EEOC will ask that the complaints examiner send the complaint file with the final report and four copies of the hearing transcript to the Director, EEOCCRA, ATTN: SFCR, WASH, DC 20310-1913. When there is more than one complainant, the EEO officer will ask that an additional copy of the report and transcript be sent to EEOCCRA for each additional complainant. If the complaints examiner sends the report to the activity rather than to EEOCCRA, the EEO officer will immediately return the file to the EEOC by certified mail, return receipt requested, with instructions to transmit it to the Director, EEOCCRA, ATTN: SFCR, WASH, DC 20310-1813.

(d) The request to the EEOC will also provide the name, title, address, and telephone number of the labor counselor as the Army representative at the hearing. A copy of the request will be given to the complainant.

(e) The EEO officer will arrange for the services of a court reporter at the hearing. Activities may not use Army court reporters and should attempt to arrange for a court reporter from Navy or Air Force installations under an interservice support agreement. If no reporter is available, the activity may

#### 32 CFR Ch. V (7-1-98 Edition)

then contract for a court reporter through their contracting office using the General Services Administration (GSA) Federal Supply Schedule.

#### § 588.25 The hearing.

(a) The hearing is conducted by an EEOC complaints examiner subject to EEOC regulations and procedures. This paragraph is provided for information and general guidance and does not control the EEOC complaints examiner's activities.

(b) Before scheduling the hearing, the complaints examiner reviews the complaint file to determine if further investigation is needed and, if so, asks the activity to conduct the additional investigation. If a complaints examiner asks an activity to conduct further investigation, the EEO officer will promptly forward the request to the responsible USACARA Regional Office with an information copy of the transmittal letter furnished the complainant and the complaints examiner. The examiner may also ask the activity to arrange for the witnesses needed to testify at the hearing. (See § 588.70) If a prehearing adjustment of the complaint is reached, the original copy of the agreement will be forwarded immediately to the activity EEO officer who will send necessary closeout document to EEOCCRA.

(c) Attendance at the hearing is limited to persons determined by the complaints examiner to have a direct connection with the complaint. The activity will make available all DA personnel called as witnesses for a hearing, unless the presence of a prospective witness is administratively impractical. The complaint examiner conducts the hearing to bring out pertinent facts and accept pertinent document. Rules of evidence are not applied strictly, but the examiner will exclude irrelevant or unduly repetitious evidence. Information that has a bearing on the complaint, including employment policies or practices relevant to the complaint, will be received in evidence. The complainant, his or her representative, if any, and the labor counselor at the hearing are given the opportunity to cross-examine witnesses who appear and testify. Testimony is given under oath or affirmation. (See

## Department of the Army, DoD

## § 588.27

§ 588.64 for the right of the ADO at the hearing.)

(d) The hearing is recorded and transcribed verbatim. All documents accepted by the examiner at the hearing are made part of the record. If the labor counselor submits a document that is accepted, a copy of the document shall be furnished to the complainant. If the complainant submits a document that is accepted, he or she shall make the document available to the labor counselor for reproduction.

(e) The complaints examiner considers all documents in the complaint file, including the record of the hearing, in making his or her findings, and analysis, and recommendation. The examiner then sends the complaint file to EEOCRA with the required number of copies of the examiner's report and hearing transcript, and notifies the complainant of the date that this is done. The report may include recommended remedial action, if proper, regarding the matter that gave rise to the complaint. Also, the examiner may send EEOCRA a separate letter concerning conditions in the activity that do not have a direct bearing on the complaint.

### § 588.26 Final Army decision.

(a) The Director of EEO or another person designated by the Secretary of the Army makes the final decision, in writing, for the Army. The decision, based on information in the complaint file, is sent to the complainant and his or her representative, if any, by certified mail, return receipt requested. Copies are sent to the MACOM and activity EEO officer. The decision may also be personally delivered to the complainant and the representative by an Army official. If so, the complainant and the representative acknowledge receipt by signing and dating the official copy, and the server signs it and indicates on the copy to whom and when the decision was served. The receipt or the signed copy is filed in the complaint file.

(b) If a hearing was not held, the decision will specify the reasons for the decision and any remedial action to be taken.

(c) If a hearing was conducted, the complainant and the activity will re-

ceive a copy of the findings, analysis, and recommendations of the complaints examiner with a copy of the hearing record. The final Army decision may adopt, reject, or modify the decision recommended by the complaints examiner. If the examiner has recommended a finding of discrimination and if the final Army decision letter will give the specific reasons for the rejection or modification. A complaints examiner's recommended finding of discrimination will become final and binding on the Army if 180 calendar days have elapsed since the complaint was filed and the Army has not issued a final decision concerning the recommendation within 30 calendar days after its receipt.

(d) The Army decision will require any remedial action authorized by law that is judged to be necessary or desirable to resolve issues of discrimination and to promote EEO policy.

(e) If discrimination of reprisal is found and there is an attorney of record, the Army decision will advise the complainant and his or her representative that attorney fees and/or costs maybe awarded and that any request for this award must be documented and filed within 20 calendar days after receiving the notice. Where the Army determines not to award attorney fees and/or costs to a prevailing complainant represented by an attorney, the decision will state the specific reasons for denying the award. Attorney fees and/or costs are not authorized in age discrimination complaints.

(f) The Army decision will inform the complainant of the right to appeal the decision to the EEOC, of the right to file a civil action, and of the applicable time limits. (For appeal and civil action procedures, see § 588.57.)

(g) Section 588.65 of this regulation addresses the rights of the ADO when a final decision is made.

### § 588.27 Avoiding delays.

(a) Complainants and management officials must not only comply with the time limits specified in this section and Army directives, they should also process a complaint without delay so that it may be resolved within 180 days after the formal complaint is filed. This includes the time spent by the